PCIA Personal Communications Industry Association

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

ORIGINAL

March 22, 1996

William F. Caton
Federal Communications Commission
1919 M Street, N.W., Room 122
Washington, D.C. 20554

Re: Written Ex Parte Communication in CC Docket No. 95-185 and 96-6

Dear Mr. Caton:

This is to advise you that Robert Hoggarth and Robert Cohen of the Personal Communications Industry Association, and Jeffrey Linder of Wiley, Rein & Fielding, met today with Peter Tenhula, Suzanne Tetreault, and Aliza Katz of the Office of General Counsel to discuss PCIA's position on terminating compensation for broadband and narrowband CMRS providers, as reflected in the attached handout. They also distributed two handouts regarding PCIA's position in the fixed CMRS proceeding, which are also attached but were not discussed.

Respectfully submitted,

Mark Golden rac

Mark Golden
Vice Pres., Industry Affairs

cc: Peter Tenhula
Suzanne Tetreault
Aliza Katz

No. of Copies rec'd 0+2
List ABCDE

• 500 Montgomery Street • Suite 700 • Alexandria, VA 22314-1561 •
• Tel: 703-739-0300 • Fax: 703-836-1608 • Web Address: http://www.pcia.com •

PCIA *Personal Communications Industry Association*

THE COMMISSION SHOULD ADOPT NATIONWIDE TERMINATING COMPENSATION MECHANISMS FOR BROADBAND AND NARROWBAND CMRS-LEC INTERCONNECTION
CC DOCKET NO. 95-185

This proceeding presents the Commission with an historic opportunity to allow wireless providers to offer a wide variety of new interconnected services at competitive prices, including local exchange service. Strong leadership is needed, however, to counteract the tremendous leverage of local exchange carriers ("LECs").

- **EXISTING COMPENSATION SCHEMES ARE UNFAIR TO WIRELESS PROVIDERS AND STIFLE COMPETITION**

  - Every broadband CMRS interconnection agreement forces the mobile carrier to pay the LEC to terminate mobile-originating traffic, but does not obligate the LEC to pay the mobile carrier for terminating LEC-originating traffic.

  - Paging carriers currently pay LECs for the "privilege" of terminating landline-originating traffic. They receive no compensation whatsoever, even though they generate considerable financial benefits for LECs by stimulating usage of the local telephone network.

- **FOR BROADBAND CMRS, BILL AND KEEP SHOULD BE EXPANDED BEYOND LOCAL SWITCHING AND CALL TERMINATION**

  - The Commission's proposal does not go far enough.

    - Under the proposal, as under current interconnection agreements, broadband CMRS providers still would pay transport and tandem-switching charges on landline-terminating calls, even though they would not receive compensation for similar functions in their networks on mobile-terminating calls.

    - In addition, broadband carriers still would be required to pay the full cost of entrance facilities, even though such facilities handle two-way traffic and therefore benefit both carriers.

  - PCIA's proposal remedies these deficiencies by requiring zero-cost termination of traffic by both parties (*i.e.*, each party bears its own transport, switching, and local loop costs), and the shared cost of entrance

• 500 Montgomery Street • Suite 700 • Alexandria, VA 22314-1561 •
• Tel: 703-739-0300 • Fax: 703-836-1608 • Web Address: http://www.pcia.com •

facilities.

- This expanded bill and keep proposal serves the public interest by:
  - Encouraging efficient network design.
  - Giving wireless carriers greater leverage in interconnection negotiations.
  - Recognizing that LEC-CMRS traffic flows are approaching equality -- and, more importantly, removing an obstacle to true equality.
  - Avoiding administratively and technically complex alternatives.

- **NARROWBAND CMRS PROVIDERS ARE ENTITLED TO TERMINATING COMPENSATION**
  - Because all LEC-narrowband calls are mobile terminating, a bill and keep scheme fails to provide narrowband providers with *any* compensation, despite the fact that their networks are used intensively.
  - However, narrowband CMRS must be included in any fair compensation scheme because such providers use their networks to terminate landline-originating calls, producing significant financial benefits for LECs.
  - The regulatory parity directive of Section 332 compels that terminating compensation rights extend to both broadband and narrowband CMRS providers.
  - Technologically, as providers expand their service offerings and seek to offer one-stop shopping, parity of treatment will become increasingly necessary to assure fair competition.
  - Accordingly, LECs should pay the entire cost of the the trunks connecting the LEC switch to the narrowband switch. In addition, narrowband CMRS providers should be permitted to charge reasonable fees for the use of their networks in terminating calls.

- **THE COMMISSION HAS THE AUTHORITY TO MANDATE BILL AND KEEP FOR ALL INTRA- AND INTERSTATE WIRELESS SERVICES**

- Section 332(c) of the Communications Act of 1934, as amended, represents a broad grant of federal power in the field of CMRS rates and interconnection rights.
  - Section 332(c)(3)(A) explicitly prohibits state regulation of CMRS rates.
  - Section 332(c)(1)(B) empowers the Commission to order LEC-CMRS interconnection pursuant to Section 201, upon the reasonable request of a CMRS provider.
  - Section 332(c)(1)(C) requires the Commission to review competitive conditions in the CMRS market and promulgate rules that promote competition.
- The inseparability doctrine provides an additional basis for preemption.
  - Mobile callers often cross and re-cross state lines while making a single call, making any jurisdictional classification essentially arbitrary.
  - CMRS service areas often encompass multistate areas.
  - CMRS networks are interconnected to form a nationwide "network of networks."
- The Telecommunications Act of 1996 buttresses the Commission's preexisting authority.
  - Under Section 251, the Commission is empowered to promulgate reciprocal compensation rules for LEC-CMRS interconnection. Any state action must be consistent with these federal rules. Moreover, Section 251 explicitly does not disturb the Commission's authority over CMRS-LEC interconnection under Section 201.
  - Section 252 plainly states that bill and keep is a just and reasonable form of terminating compensation scheme.
  - Section 253 expressly leaves the preemption provisions of Section 332(c)(3) intact.

- **LEC-CMRS INTERCONNECTION AGREEMENTS SHOULD BE STAND-ALONE CONTRACTS FILED UNDER SECTION 211**

  - Structuring LEC-CMRS interconnection by contract is consistent with the way landline LECs order arrangements among themselves, and therefore reinforces the co-carrier status of CMRS providers.

  - The Commission retains authority to assure Section 211 contracts are in the public interest, and such contracts may not be abrogated by subsequently filed, unilateral tariffs.

- **CMRS PROVIDERS SHOULD BE COMPENSATED FOR THE USE OF THEIR NETWORKS BY IXCs**

  - In the case of direct CMRS-IXC interconnection, compensation arrangements should be privately negotiated by the parties, without FCC intervention or the filing of access tariffs by CMRS providers.

  - Where interconnection occurs through a LEC, the revenues should be rationally divided between the CMRS provider and the LEC.

PCIA *Personal Communications Industry Association*

CMRS LICENSEE PROVISION OF FIXED SERVICES -- WHETHER LOCAL LOOP OR OTHERWISE -- SHOULD BE TREATED UNDER THE SAME REGULATORY SCHEME AS CMRS MOBILE SERVICES
WT DOCKET NO. 96-6

Section 332 Gives the Commission Plenary Authority Over the Fixed Service Offerings of CMRS Carriers. With the enactment of Section 332(c) of the Communications Act, Congress deliberately chose a federal regulatory framework to apply to all commercial mobile radio services ("CMRS"). Because CMRS services "by their nature, operate without regard to state lines . . .,"[1] such services were specifically exempted from the dual federal and state regulatory regime originally established to govern interstate and intrastate services. Congress' intent was to create a seamless federal regulatory framework for CMRS providers. Thus, if CMRS carriers are subject to multiple layers of regulation based on the make-up of their service offerings at any given point in time, Congress' goal of achieving regulatory parity and uniformity in rate and entry regulation would be thwarted. Moreover, CMRS carriers' ability to add value to their mobile service offerings by marketing a menu of services, including fixed wireless loop service, would be severely restricted.

A handful of parties argue that wireless local loop services offered as an integral part of CMRS services by a CMRS provider do not qualify as mobile services and thus, are not exempt from state rate and entry regulation. However, by defining "mobile service" as "any service for which a license is required in a personal communications service established pursuant to the [PCS] proceeding . . . or any successor proceeding," Congress made clear that all PCS services, whether they are fixed or mobile in nature, are to be defined as CMRS and regulated under Section 332. Consistent with the federal mandate to promote regulatory parity, the FCC is required to treat all other CMRS offerings in the same manner.

Several parties assert that all local loop services must be subject to comparable regulation, or else the Commission is promoting regulatory discrimination based on technology. Congress, however, has directed in Section 332 that CMRS be subject to federal regulation as described above. Arguments about technology-based discrimination do not affect the congressional mandate. In addition, in other contexts and under other sections of the Communications Act, the Commission has concluded that different types of carriers providing similar services may warrant different levels of regulation.

---

[1] Budget Act House Report at 260; *cf.* H.R. Rep. No. 103-213, 103rd Cong., 1st Sess. 494 (1993).

The Inseverability of Intrastate and Interstate CMRS Offerings Supports Federal Jurisdiction. While Section 332(c)(3)(A) of the Communications Act imposes no prohibition on state regulation of "other terms and conditions" of commercial mobile services, that jurisdiction remains subject to the "inseverability" doctrine. This doctrine, developed by the Supreme Court in *Louisiana PCS*, granted the FCC authority to preempt conflicting state rules where the Commission could not "separate the interstate and the intrastate components of [its] asserted regulations."[2] Where "compliance with both federal and state law is in effect physically impossible," federal law must prevail.[3]

State Regulation of CMRS Offerings Is Impermissible Under the Telecommunications Act of 1996. The FCC's proposal to subject fixed services offered by CMRS carriers to the same regulatory scheme as their mobile service offerings is consistent with the competitive policies recently adopted in the Telecommunications Act of 1996. New Section 253(a) of the Act states that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[4] As any state entry or rate regulation would violate Section 253(a) by effectively prohibiting the provision of fixed services by CMRS carriers, it would be subject to preemption pursuant to Section 253(d).[5] Moreover, the Telecommunications Act of 1996 specifically preserved the preemption provisions of Section 332(c)[6] and excluded CMRS providers from the definition of "local exchange carrier."[7] Thus, the Telecommunications Act of 1996 reaffirms Congress' intent that federal regulation supersede state law with respect to CMRS, however defined.

---

[2] *Louisiana PCS*, 476 U.S. 355, 376, n.4 (1986).

[3] *Id.*, at 368.

[4] 47 U.S.C. § 253(a).

[5] 47 U.S.C. § 253(d).

[6] 47 U.S.C. § 253(e).

[7] 47 U.S.C. § 3(44).

PCIA Personal Communications Industry Association

FLEXIBLE SERVICE OFFERINGS BY CMRS PROVIDERS

PCIA supports the Commission's proposals in WT Docket No. 96-6 for clarifying the extent of operational flexibility accorded CMRS providers under the Commission's rules.

The pro-competitive and deregulatory program outlined in the *Notice* should be expanded to permit all broadband and narrowband CMRS providers to offer all fixed services that they are technically capable of providing. Such action will promote competition in both wireless and local exchange marketplaces by making available to consumers a broad range of service offerings at competitive prices.

The Commission should rely on the marketplace to determine whether CMRS will be used for mobile or fixed use, or a combination thereof. In order to compete successfully with local exchange carriers, CMRS providers must be able to provide integrated service offerings or "one stop shopping." In response to customer demand, CMRS providers must be allowed to use their spectrum for fixed or mobile use. Such a policy will ensure the most efficient spectrum usage.

PCIA endorses the FCC's proposal to encompass fixed CMRS offerings within the same regulatory framework as CMRS. The Commission's authority to preempt any state regulation of wireless fixed services that impedes achieving federal policies for CMRS arises from Section 332(c) of the Communications Act and the inseverability doctrine, as described in *Louisiana PSC* and its progeny.

Implementation of the Commission's proposals will help to eliminate artificial regulatory constraints and maximize reliance on the marketplace consistent with the Commission's competitive policies.

• 500 Montgomery Street • Suite 700 • Alexandria, VA 22314-1561 •
• Tel: 703-739-0300 • Fax: 703-836-1608 • Web Address: http://www.pcia.com •